



February 27, 2017

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Submitted via email to regs.comments@federalreserve.gov as per instructions in the Federal Register, Vol. 81, No. 248/Tuesday, December 27, 2016/Rules and Regulations

RE: The Board of Governors of the Federal Reserve System Interim Final Rule to change its Freedom of Information Act Regulation, 12 CFR Part 261, Docket No. R-1556 and RIN No. 7100 AE-65

We offer these comments on behalf of the National Archives and Records Administration's Office of Government Information Services (OGIS) regarding the Board of Governors of the Federal Reserve System Interim Final Rule to change its Freedom of Information Act Regulation, 12 CFR Part 261, Docket No. R-1556 and RIN No. 7100 AE-65.

We commend the Board of Governors of the Federal Reserve System (Board) for reviewing its disclosure policies and issuing its proposed rule for FOIA regulations.

OGIS, created by Congress in the OPEN Government Act of 2007, has the statutory mandate under the Freedom of Information Act (FOIA) to offer mediation services to resolve disputes between FOIA requesters and agencies, review agency FOIA policies, procedures, and compliance, and identify procedures and methods for improving FOIA compliance. As part of our compliance mission, we comment on proposed new and updated agency FOIA regulations and other notices related to FOIA. The FOIA Improvement Act of 2016 requires that agencies review and issue FOIA regulations to ensure consistency with the amended statute and that the regulations include procedures for engaging in dispute resolution through the FOIA Public Liaison and OGIS.

NATIONAL ARCHIVES *and*
RECORDS ADMINISTRATION

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We submit the following comments:

§ 261.13 Processing requests

We recommend that you update §261.13(i)(4) to comply with guidance from OIP directing agencies to alert FOIA requesters of OGIS's dispute resolution services as a nonexclusive alternative to litigation as part of the agency's appeal determination

(<http://www.justice.gov/oip/foiapost/2010foiapost21.htm>). We also recommend that you update this subsection to improve understanding of OGIS's dispute resolution services, and the Board's role in the process.

Specifically, we recommend that §261.13(i)(4) read as follows (additional text in bold and italics):

“The Board shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal by the Freedom of Information Office, and the determination letter shall notify the appealing party of the right to seek judicial review ***and the availability of dispute resolution services from the Office of Government Information Services as a nonexclusive alternative to litigation. Dispute resolution is a voluntary process. If the Board participates in the dispute resolution services provided by the Office of Government Information Services, it will actively engage as a partner to the process in an attempt to resolve the dispute.***”

This language is similar to language suggested by the Department of Justice (DOJ) in Section VIII (d) of the Template for Agency FOIA Regulations (<https://www.justice.gov/oip/template-agency-foia-regulations>). The use of the term “dispute resolution” instead of “Mediation” services clarifies for requesters the difference between formal mediation and the services OGIS provides, and reflects language in OGIS's implementing regulation.

Comments submitted on behalf of the National Archives by:

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